

1 A A high rating in the Harrisburg
2 DMA for what product?

3 Q It varies product by product?

4 A Well, sure, different teams are
5 going to perform in different manners. If
6 Florida State basketball plays in Harrisburg,
7 they are not going to do as well as Baltimore
8 Orioles in Harrisburg.

9 Q Do the Orioles receive a high
10 rating in Harrisburg?

11 A In my opinion the Orioles do
12 receive a high rating in Harrisburg.

13 Q Do ratings go up if the Orioles
14 are playing the Yankees and the Red sox?

15 A It's not an absolute, but those
16 games tend to be higher than others. There is
17 some information that you and I talked about
18 before where the Royals game did a [REDACTED]; that
19 was the highest rating during I believe that
20 July time period, the Kansas City Royals, not
21 the Yankees or the Red Sox.

22 Q For the July 2004 rating that you

1 keep referring to, how many games were
2 included in that rating?

3 A I can't recall, but I believe it
4 was between 17 and 21; I'm guessing.

5 Q Does 15 sound right?

6 A Okay, 15, I'll take your word for
7 15.

8 Q Of those 15, how many of those
9 games involved the Orioles playing the Red Sox
10 or Yankees?

11 A I don't have that list in front of
12 me. If you want to tell me what it was I'll
13 be able to help you.

14 Q It was six.

15 A Okay.

16 Q Do the Orioles play the Red Sox
17 and Yankees six times every month?

18 A No, no, certainly not.

19 Q So you indicated that in July,
20 2004, the rating, the Nielsen rating, was [REDACTED]
21 in Harrisburg; correct?

22 A I believe so, yes.

1 Q What was the average rating of
2 Orioles games in Harrisburg that did not
3 involve the Yankees or Red Sox?

4 A I can't tell you that without
5 having it in front of me.

6 Q Would a rating of [REDACTED]
7 surprise you?

8 A [REDACTED]

9 Q Right.

10 A No, that's pretty good.

11 Q And you --

12 JUDGE SIPPEL: in what way is it
13 good? Is it down or up?

14 WITNESS: If the non-Yankees or
15 Red Sox game did a [REDACTED], in the worst
16 viewing month of the year on a team that is
17 not performing well like the Orioles -- the
18 Orioles haven't won in about 12 years. So if
19 you are doing a [REDACTED], any cable industry
20 expert will tell you that that is a really
21 good number. And given the fact that we are
22 on a sports tier apparently, that is a huge

1 number. That means there is a lot of interest
2 and a lot of demand for the programming.

3 JUDGE SIPPEL: What was the year
4 that Cal Ripken was doing that --

5 WITNESS: That was 1996, I
6 believe.

7 (Laughter.)

8 BY MR. KIRK:

9 Q You just reiterated again the July
10 is the lowest viewing month?

11 A I believe that July is the lowest
12 viewing month, yes, of the 12 months.

13 Q What was the average rating of
14 Orioles' games in Harrisburg in May, 2003?

15 A Sir, to be honest with you, I
16 don't have all those stats memorized. If you
17 tell me what it was, I'm not going to disagree
18 with you.

19 Q Would a [REDACTED] surprise
20 you?

21 A What month?

22 Q May.

1 A Of?

2 Q 2003.

3 A No, it wouldn't surprise me, given
4 the fact that it's May sweeps, it's American
5 Idol, all those shows on the networks have
6 their last hurrahs and their final shows. It
7 wouldn't surprise me that baseball viewing was
8 a little lower in May versus June, when those
9 shows are finished.

10 Q So based on your testimony, July
11 being the lowest rated viewing month, if it
12 was a [REDACTED] in May, 2003, you would
13 expect it be even lower in July, 2003,
14 correct?

15 A I'm sorry, say that again.

16 Q You indicated that July is
17 historically the lowest rating month.

18 A For television, July and August
19 are the worst viewing months of the year
20 because people are on vacation.

21 Q So if Orioles' games had a rating
22 of [REDACTED] in May of 2003, you would

1 then expect that it would be lower in July of
2 2003?

3 A No, no, no that is not what I'm
4 saying. No, I don't believe that is what I'm
5 saying. July historically is the worst TV
6 viewing month, and for us to do a [REDACTED]
7 and a [REDACTED] is a very good number
8 for July in terms of TV.

9 In terms of May, what I'm saying,
10 it's going to be harder for a regional sports
11 network to compete because we are up against
12 your favorite shows on TV, like I said,
13 American Idol, Dancing with the Stars. All
14 those shows that have their endings and final
15 shows, it's hard to eat into the chunk of the
16 broadcast networks.

17 Q Do you know what the average
18 rating of Orioles games in Roanoke-Lynchburg
19 was in May, 2003?

20 A I don't, not off the top of my
21 head.

22 Q Would a zero [REDACTED] surprise

1 you?

2 A No. That doesn't surprise me.

3 Q Given the 2003 ratings that I was
4 just discussing, why do you think the July
5 2004 rating is representative?

6 A I didn't say it was
7 representative. I said that was the rating
8 that month. 2004 was the last year that the
9 Orioles had no competition from another major
10 league team. The Washington Nationals did not
11 exist. So if you want a good idea about team
12 affinity and demand, and ratings, for the
13 Orioles, then you go to a year where the
14 Orioles didn't have competition from the Nats.
15 We looked at July of '04, we looked at the
16 ratings, they are what they are.

17 Q You just happened to pick a month
18 where they were playing the Red Sox and
19 Yankees six times?

20 A I'm sure if I had the time
21 analysis I could come up with other months
22 that were comparable to that month.

1 Q Okay. In paragraph 18 of your
2 written testimony you indicate that carriage
3 by AM stations is indicative of demands for
4 the Orioles in Pennsylvania; correct?

5 A Carriage by radio stations is
6 definitely a factor in determining popularity,
7 affinity and importance of areas where that
8 teams needs to be covered and wants to be
9 covered; more radio stations want to have that
10 product.

11 Q And you testified that the Orioles
12 are carried by AM stations in Carlisle,
13 Hanover, Lancaster, Shippensburg and York.
14 Does that sound right?

15 A Yes, it does.

16 Q Let's take these one at a time.
17 Does Comcast carry MASN in Carlyle?

18 A I believe it does.

19 Q Does it carry MASN in Hanover?

20 A I believe it does.

21 Q Does it carry MASN in Lancaster?

22 A I believe it does.

1 Q Does it carry MASN in
2 Shippensburg?

3 A Yes.

4 Q And does it carry MASN in York?

5 A Yes, it does.

6 Q Does it carry MASN in Harrisburg?

7 A I don't think so.

8 Q And does MASN have carriage by an
9 AM station in Harrisburg?

10 A Does MASN have carriage on an AM
11 station?

12 Q Correct.

13 A How would that be? How would MASN
14 have carriage on an AM --

15 Q The Orioles? Are the Orioles
16 carried on an AM station in Harrisburg?

17 A No, they aren't.

18 Q So the AM stations that you
19 referred to as indicative of demand are the
20 very same areas where Comcast has decided to
21 carry MASN; correct?

22 A Well, I believe there are areas in

1 Lynchburg and Charlottesville and other areas
2 where the Orioles are carried on radio and not
3 carried on MASN. It's not absolute.

4 Q But in Pennsylvania. In the
5 Harrisburg DMA. Where you have AM coverage is
6 where you also have Comcast coverage; correct?

7 A Yes, in those areas you would.

8 Q Do you know whether the Orioles
9 have obtained carriage -- have ever had
10 carriage by an AM station in the city of
11 Harrisburg?

12 A I do not know.

13 Q In paragraph 24 of your written
14 testimony you indicate that the fact that WRNL
15 has asked MASN to provide a beat writer
16 indicates demand in the Orioles and Nationals;
17 is that correct?

18 A That is correct.

19 Q Where is WRNL?

20 A I believe it's in southwestern
21 Virginia.

22 Q Does it broadcast major league

1 baseball games?

2 A It does not, not that I know. I
3 don't think it does.

4 MR. KIRK: I would like to
5 introduce Exhibit No. 98.

6 JUDGE SIPPEL: Is that from
7 Comcast or --

8 MR. KIRK: It's a Comcast exhibit
9 that has not yet been entered into evidence.
10 It is a printout of the WRNL website.

11 JUDGE SIPPEL: Thank you.

12 (Whereupon the aforementioned
13 document was marked for
14 identification as Comcast Exhibit
15 No. 98.)

16 JUDGE SIPPEL: This is Comcast 98
17 for identification. Where it says sports 910
18 radio at the top. Is there a date reference
19 on this, sir?

20 MR. KIRK: On the bottom right-
21 hand side, Your Honor.

22 JUDGE SIPPEL: It says May 9,

1 2009; that's a printout date. Would that be
2 concurrent with the date of the document?

3 MR. KIRK: It is. That's how it
4 prints it. It puts the date right on it.

5 JUDGE SIPPEL: All right. It's
6 identified as Comcast No. 98. You may proceed
7 with it, sir.

8 BY MR. KIRK:

9 Q On the left-hand corner do you see
10 a box saying Braves or Red Sox?

11 A Yes, top left-hand corner, yes.

12 Q Does that appear to be in bold?

13 A Yes, it does.

14 Q And does it indicate, choose your
15 game, vote now?

16 A Yes.

17 Q If you go to the second page, does
18 there appear to be a number of entries for
19 choosing your game, indicating what game do
20 you want to hear, Braves versus some team or
21 Red Sox versus another team?

22 A Yes.

1 Q So this station appears to be
2 promoting Braves and Red Sox; correct?

3 A It's promoting Braves and Red Sox
4 but I can't tell you if that is on the radio
5 or if that is online. I can't tell you if
6 that is an online feed or a distribution on
7 their radio station. I can't tell you whether
8 it's broadcast on radio or if it's offered as
9 an MLB package or online. I can't tell you
10 that.

11 Q Okay.

12 JUDGE SIPPEL: Do you want to
13 move that into evidence? Are you going to
14 seek to move it into evidence?

15 MR. KIRK: I want to ask the
16 witness whether it surprises him that that
17 station would be asking its viewers about
18 Braves and Red Sox games.

19 WITNESS: Is it surprising? I
20 don't know if it's surprising, because the
21 Richmond Braves were affiliated with the
22 Atlanta Braves, and I believe they lost that

1 affiliation. I don't know if they lost it to
2 the Red Sox.

3 I meant it's surprising a little
4 bit, but it is not far-fetched to see that the
5 minor league affiliate had something to do
6 with this.

7 Q So you said the Richmond Braves?

8 A I believe there was a team called
9 the Richmond Braves who were on this -- who
10 played in this market that were an affiliate
11 of the Atlanta Braves. And I believe that
12 they might have switched affiliate relations;
13 I don't know their affiliate. But for
14 certain, I believe Richmond was the minor
15 league club to Atlanta.

16 Q So you think that that station
17 serves Richmond; is that what you are saying?

18 A Well, it says it does. It says
19 WRNL Richmond right there.

20 Q Then why did you include it in
21 your testimony as indicative of demand in
22 Roanoke-Lynchburg?

1 A Well, I'm not going to sit here
2 and tell you that the Richmond and southwest
3 Virginia and Roanoke-Lynchburg DMAs is
4 borderline. I can't tell you if the feed
5 doesn't go into Roanoke and Lynchburg. I hope
6 it doesn't. If I wrote that, I would research
7 that.

8 JUDGE SIPPEL: I'm not sure that
9 that answered the question. Are you satisfied
10 with that, Mr. Kirk, for your purposes?

11 MR. KIRK: I don't think he's
12 answered the question in terms of, if this is
13 on its website, then Richmond radio station,
14 why did you use that in your testimony dealing
15 with non-carriage in Roanoke-Lynchburg, Tri-
16 Cities and Harrisburg.

17 WITNESS: My testimony says one
18 radio station in southwestern Virginia, WRNL,
19 has asked MASN to provide a beat report. I
20 didn't say -- I don't believe I say in here
21 whether it was Richmond or Roanoke-Lynchburg.

22 BY MR. KIRK:

1 Q Does Comcast carry MASN in
2 Richmond?

3 A It does in some parts, yes.

4 Q And why would that be relevant to
5 this dispute, that radio station?

6 A Because there are some portions of
7 Richmond where Comcast does not carry MASN.

8 MR. KIRK: Your Honor, I'd like
9 to move Comcast Exhibit No. 98 into evidence.

10 JUDGE SIPPEL: Objection?

11 MR. FREDERICK: None.

12 JUDGE SIPPEL: It's in as 98,
13 Comcast 98. Thank you.

14 (Whereupon the aforementioned
15 document having been previously
16 marked for identification as
17 Comcast Exhibit No. 98 was
18 received into evidence.)

19 BY MR. KIRK:

20 Q In paragraph 29 of your testimony
21 you discuss negotiations for ACC rights;
22 correct?

1 A Yes, I do.

2 JUDGE SIPPEL: What is ACC?

3 WITNESS: ACC is the Atlanta
4 Coast Conference where teams like Maryland and
5 North Carolina and Duke play.

6 JUDGE SIPPEL: Is that basketball
7 or football or both?

8 WITNESS: That conference is both
9 basketball and football.

10 JUDGE SIPPEL: Well, what is the
11 big attraction -- well, it would be desirable
12 for both reasons, or one --

13 WITNESS: This contract was only
14 basketball. The one I negotiated was only
15 basketball.

16 JUDGE SIPPEL: But basketball
17 kind of trumps football in that region, so
18 there is quite a difference.

19 WITNESS: That was the only thing
20 that was offered to us as part of this
21 contract. They did not have the rights to
22 offer us the football games.

1 JUDGE SIPPEL: Okay.

2 WITNESS: And I'm speaking of
3 Comcast SportsNet.

4 BY MR. KIRK:

5 Q Do you view ACC programming as
6 highly valuable in southwestern Virginia?

7 A There is an importance to the
8 programming. I wouldn't say it is highly
9 valuable based on the number of games that
10 this package offers, no.

11 Q The current package that CSN Mid-
12 Atlantic has, or the package that you
13 negotiated?

14 A The current package that I
15 negotiated and also the current package that
16 CSNMA has now, does not have a significant
17 number of Virginia or Virginia Tech basketball
18 games to warrant me, or I think anybody at
19 that network, to say it's highly valuable. It
20 certainly won't drive the day when it comes to
21 negotiating with operators, because there are
22 such a small number of games that pertain to

1 that region.

2 Q Putting aside the number of games,
3 is ACC programming in general highly valuable
4 in southwestern Virginia?

5 A No, I just said it's not highly
6 valuable.

7 Q I thought you said because of the
8 number of games in the package. So regardless
9 of the number of games, you don't think it's
10 highly valuable?

11 A In terms of what, highly valuable?
12 In terms of getting an operator to sign on
13 with you or selling advertising? Give me some
14 framework for what you mean by highly
15 valuable.

16 Q To viewers in southwestern
17 Virginia, would ACC basketball generate high
18 interest?

19 A It would generate interest. It
20 would generate interest from the fans who go
21 to that school and the fans in that area.

22 Q High interest?

1 A If they have two games on, you
2 can't answer that question without having the
3 number of games. If you have one game on as
4 part of a package it's not going to be high
5 interest. That product is non-exclusive. You
6 can get it on ESPN; you can get it anywhere.
7 So I'm not going to sit here and say it's
8 highly valuable, or if it's of high interest,
9 because you have to tell me how many
10 basketball games there are. It's too tough a
11 question to answer. There is too much out
12 there.

13 Q I am not asking about a particular
14 number of games. I am trying to get the
15 witness to answer me as to whether or not ACC
16 programming is highly valuable.

17 A In my opinion in the terms that I
18 deal with, advertisers and distribution, it is
19 not highly valuable in that area.

20 Q Okay. What is ACC Sports Net?

21 A ACC Sports Net was an idea, when I
22 was a consultant, after I left Comcast, to

1 start a regional sports network just like the
2 Big 10 did, where you exclusively control the
3 rights to all the football games and all the
4 basketball games.

5 You cannot compare the idea of ACC
6 Sports Net versus the contract I negotiated in
7 2001 or the subsequent contract that CSNMA
8 did, because they have a small number of
9 games; it's non-exclusive; and it's not
10 unique.

11 Q I just asked you a general
12 question as to whether or not ACC programming
13 was highly valuable, and you said no. I asked
14 a follow-up question about what ACC sports net
15 was, and you just indicated it was an idea you
16 had to form a regional sports network, or a
17 sports network with ACC programming. How do
18 you square the two?

19 A Because of the number of games,
20 and it's an exclusive product, and it's
21 football. You can't compare ACC Sports Net,
22 which has football and basketball, highly

1 rated football programming, and you have all
2 of it, every single game, versus a package of
3 40 basketball games of which in that area you
4 might get five or six Virginia-Virginia Tech
5 games. You can't compare; it's apples and
6 oranges.

7 Q But I wasn't asking you about the
8 program carriage agreement Comcast may have
9 had with ACC. I just asked you in general is
10 ACC programming highly valuable and you said
11 no.

12 A You said in that area, did you
13 not?

14 Q In southwestern Virginia.

15 A Correct, and I said no.

16 Q And so you don't think ACC Sports
17 Net would be a product that you would want to
18 sell in southwestern Virginia?

19 A ACC Sports Net, again, with all
20 the football and all the basketball, sure, I
21 would try to sell that in southwest Virginia,
22 because you have Virginia Tech and Virginia.

1 Virginia Tech just came on board to the ACC,
2 in I believe it was 2005. So Virginia Tech is
3 new, and Blacksburg and Charlottesville,
4 Blacksburg is new to the ACC. So for ACC
5 Sports Net with football and basketball, yes,
6 that's highly valuable programming. It's
7 football.

8 Q Are you aware of any surveys
9 conducted for MASN to measure fan interest on
10 the Orioles or Nationals?

11 A I'm aware of two surveys that took
12 place in the eastern part of North Carolina to
13 talk about fan interest.

14 MR. KIRK: Your Honor, I would
15 like to show the witness Comcast Exhibit No.
16 100, which has not yet been entered into
17 evidence. May I approach the witness?

18 JUDGE SIPPEL: Yes, sir.
19 (Whereupon the aforementioned
20 document was marked for
21 identification as Comcast Exhibit
22 No. 100.)

1 JUDGE SIPPEL: All right, what is
2 it 3:30? All right, the witness has been on
3 the stand for a bit. I think maybe it'd be an
4 appropriate time to take our traditional 10-
5 minute break, which usually last about 15
6 minutes. So does that say exactly -- let's
7 get back just a bit before quarter of. We're
8 in recess.

9 (Whereupon, the above-entitled
10 matter went off the record at 3:32
11 p.m. and resumed at 3:55 p.m.)

12 JUDGE SIPPEL: All set?

13 MR. KIRK: Yes.

14 JUDGE SIPPEL: Okay. Mr. Kirk.

15 BY MR. KIRK:

16 Q Before we broke, Mr. Cuddihy, I
17 handed you an exhibit numbered Comcast 100.
18 Does this document look familiar to you?

19 A Yes, I think I saw it about two
20 years ago.

21 Q And is this the survey that you
22 were talking about, or one of the surveys for

1 North Carolina?

2 A Yes, sir.

3 MR. KIRK: Your Honor, I would
4 move to have Comcast Exhibit 100 moved into
5 the record.

6 JUDGE SIPPEL: Any objection?

7 MR. FREDERICK: Well, Your Honor,
8 it's a North Carolina survey, and there has
9 been no foundation established yet as to the
10 relevance of North Carolina for the disputed
11 territories. If counsel has some foundation
12 that he'd like to lay for it, but this is a
13 document that does not do any survey for any
14 of the territories that are at issue in this
15 case.

16 MR. KIRK: Your Honor, we're -

17 JUDGE SIPPEL: Go ahead. Start to
18 make the proffer.

19 MR. KIRK: We're calling an expert
20 witness that has conducted and reviewed survey
21 data, so the fact that they've conducted a
22 similar survey is going to be directly